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ZONING HEARING EXAMINER

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Record: 10/16/98 & 10/23/98

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Forest Valley Station LLC, appeared before the Hearing Examiner requesting Board of Appeals approval to locate an Integrated Community Shopping Center (“ICSC”) on the subject property and the following four (4) variances:

1. a variance to permit a building to be less than 30 feet from the parcel boundary (20 feet proposed);
2. a variance to provide a buffer yard less than 25 feet from an adjacent residential district (15 feet proposed);
3. a variance to permit a building to be less than 50 feet from an adjacent residential district (20 feet proposed); and
4. a variance to permit a portion of the parking lot of the ICSC to be located less than 25 feet from an adjacent residential district (20 feet proposed).

Forest Valley Station, LLC, a Maryland limited liability company, is the owner of the property known as 104 Forest Valley Drive, Forest Hill, Maryland 21050, which is designated among the records of the State Department of Assessments and Taxation on Tax Map 40, as Parcel 418, Lot 1 (the “subject property”). The subject property is 1.83 acres in size and is zoned B-2, Community Business District.

Case No. 4849 - Forest Valley Station LLC

Frank F. Hertsch of Morris and Ritchie Associates, Inc., an expert civil engineer and Wes Guckert of the Traffic Group, Inc., an expert traffic consultant, testified on behalf of the Applicant.

Mr. Hertsch testified that the Applicant has already received preliminary plan approval to construct a 19,999 square foot shopping center on the subject property. The proposed building for the shopping center is in the same location as the proposed building for the ICSC. Two different conceptual site plans for the ICSC are under consideration. The adjoining property, Lot 2, as shown on the subdivision plat of Forest Valley Station (Exhibit 8), contains a Rite-Aid drug store. He noted that because the ICSC regulations impose greater setback requirements than the shopping center already approved, the area variances requested were required. Mr. Hertsch pointed out that due to topographical conditions, the proposed ICSC building could not be moved so that the requested setback variances would not be required. The witness said that the slope of the subject property falls toward Forest Valley Drive. If the building were moved away from the western boundary of the property, it would be difficult to grade the site so that the Forest Valley Drive entrance could still be utilized. This entrance is necessary to provide adequate access to the site and adjoining Lot 2.

Mr. Hertsch also testified that granting the requested variances would not cause any adverse impact of any kind to neighboring property owners. He pointed out that the proposed building adjoined undeveloped property used as open space for an apartment complex. The witness testified that an extensive screening buffer already exists on the adjoining property next to the proposed building. Furthermore, the adjoining property is also subject to an easement for forest conservation as shown on the subdivision plat.

Mr. Guckert testified that based on his examination of studies prepared by the Institute of Traffic Engineers, traffic generated by a single user of a building of approximately 20,000 square feet as already approved would not differ from that generated by multiple users occupying the proposed building. He testified that in his opinion, no adverse traffic impact would result from approval of the requested ICSC.

Case No. 4849 - Forest Valley Station LLC

The Staff Report prepared by the Department of Planning and Zoning, (“Department”) recommended conditional approval of the Applicant’s request.

No protestants appeared in opposition to the Applicant’s request.

CONCLUSION:

The Applicant is requesting Board of Appeals approval to locate an ICSC on the subject property and the following four (4) variances: 1) a variance to permit a building to be less than 30 feet from the parcel boundary (20 feet proposed); 2) a variance to provide a buffer yard less than 25 feet from an adjacent residential district (15 feet proposed); 3) a variance to permit a building to be less than 50 feet from an adjacent residential district (20 feet proposed); and 4) a variance to permit a portion of the parking lot of the ICSC to be located less than 25 feet from an adjacent residential district (20 feet proposed).

Section 267-47 of the Code provides in pertinent part as follows:

(A)(5)(b):

“All parking lots, loading areas and outdoor storage areas shall be separated with buffer yards of at least twenty-five (25) feet from any adjacent roads and residential districts.”

(B)(5):

“No building shall be less than thirty (30) feet from the parcel boundary nor fifty (50) feet from an adjacent residential district.”

The Code, pursuant to Section 267-11, authorizes the granting of variances provided the Board finds that:

- (1) by reason of the uniqueness of the property or topographical conditions literal enforcement of Part 1 will result in practical difficulty or unreasonable hardship; and
- (2) the variance will not be substantially detrimental to adjacent properties and will not materially impair the purposes of this Part 1 or the public interest.

Case No. 4849 - Forest Valley Station LLC

The concept of uniqueness in variance cases was discussed by the Court of Special Appeals in the case of North v. St. Mary's County, 99 Md. App. 502, 638 A.2d 1175 (1994) wherein the court stated:

“In the zoning context the “unique” aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. “Uniqueness” of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.”

An example of uniqueness is found in the use variance case of Frankel v. Mayor and City Council, 223 Md. 97, 104 (1960), where the court noted: “He met the burden; the irregularity of the...lot...that it was located on a corner of an arterial highway and another street, that it is bounded on two sides...by parking lots and public...institutions, that immediately to its south are the row houses...”

Based on the testimony presented and the Staff Report, the Hearing Examiner finds that the request to conduct an ICSC on the site as described by the Applicant's witnesses would not adversely affect the public health, safety and general welfare, nor would it result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. As the Staff Report indicates, all applicable Code requirements, with the exception of the requested variances, are met. All of the Limitations, Guides and Standards set forth in the Code will be met if approval is granted.

Based on the testimony provided by the Applicant, the Hearing Examiner finds that the property is unique, given its topography and its location. The adjoining property which would most be affected by the requested variances is undeveloped and cannot be developed due to the forest conservation easement. The evidence showed that requested variances will have no greater impact on the adjacent residential property than the approved shopping center.

Case No. 4849 - Forest Valley Station LLC

Existing trees on the adjoining residential property will act as a buffer to the nearby apartment complex. The Applicant will have an area 15 feet wide on site within which to plant additional landscaping to further reduce impacts. The proposed ICSC building could be built in the same location as the approved 19,999 square foot shopping center building. No additional impacts on adjoining property owners will result from adding users to the approved shopping center building. The Hearing Examiner finds that based on the evidence, granting the requested setback variances would not adversely affect adjoining property owners or the public interest.

Furthermore, the evidence showed that the proposed building location cannot be moved without adversely affecting the access to Forest Valley Drive. Thus, the Hearing Examiner finds that denial of the variances would result in practical difficulty to the Applicant.

Based on the evidence, it is the recommendation of the Hearing Examiner that the Applicant's request to build an Integrated Community Shopping Center be approved, including the requested variances, subject to the following conditions:

1. The Applicant shall submit a revised site plan, including a landscaping plan and lighting plan for review by the Department of Planning and Zoning.
2. The Applicant shall obtain all necessary permits and inspections to construct the building.
3. All tenant spaces shall be less than 10,000 square feet in size.

Date **JANUARY 6, 1999**

L.A. Hinderhofer
Zoning Hearing Examiner